APPENDIX A

"§32-1152, as amended, 1961. *Bonds.*

A. Before granting an original contractor's license the registrar shall require of the applicant a surety bond in a form acceptable to the registrar or a cash deposit as provided in this section. Before granting a renewal contractor's license, the applicant shall file with the registrar satisfactory evidence that the applicant's surety bond or cash deposit is in full force and effect.

B. The bonds as prescribed by this chapter shall be in amounts fixed by the registrar within the following schedules after giving due consideration to the volume of work contemplated by the applicant:

1. General engineering contractors are required to furnish a surety bond in an amount of not more than ten thousand dollars and not less than two thousand dollars.

2. General building contractors are required to furnish a surety bond in an amount of not more than ten thousand dollars and not less than two thousand dollars.

3. Specialty contractors are required to furnish a surety bond in an amount of not more than five thousand dollars and not less than five hundred dollars for each specialty license granted by the registrar.

C. The surety bonds shall be executed by the contractor as principal with a corporation duly authorized to transact surety business in this state. The contractor may in the alternative establish a cash deposit in the amount of the bond with the state treasurer in accordance with regulations to be issued by the registrar. Such cash deposits may be withdrawn, if there are no outstanding claims against them, one year after the termination of the license in connection with which the cash is deposited.

D. The bonds required by this chapter shall be in favor of the state for the benefit of any person covered by this subsection. The bond shall be subject to claims by any person who, after entering into a construction contract with the principal is damaged by the failure of the principal to perform the contract or by any person furnishing labor or materials used in the direct performance of a construction contract. The persons claiming against the bond or cash deposit may maintain an action at law against the contractor and the surety or the depository and the bond or depository may be sued upon in successive actions until the full amount thereof is exhausted. No suit may be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based except that time for purposes of claims for fraud shall be measured as provided in §12-543. The bond shall be continuous in form and shall be conditioned that the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond irrespective of the number of years the bond is in force. If the surety desires to make payment without awaiting court action, the amount of any bond filed in compliance with this chapter shall be reduced to the extent of any payment or payments made by the surety in good faith thereunder. Any such payments shall be based on priority of written claims received by the surety prior to court action.

E. Upon receipt by the registrar of notice to cancel a bond by any surety, the registrar shall immediately notify the contractor who is the principal on the bond of the effective date of cancellation of the bond and that the contractor must furnish a like bond or make a cash deposit within thirty days after mailing of the notice by the registrar or his license shall be suspended. Notice to the contractor shall be by certified mail in a sealed envelope with postage fully prepaid thereon, addressed to his latest address of record in the registrar's office. The contractor's

license shall be suspended on the date the bond is canceled unless a replacement bond is on file with the registrar."

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT A. KENNEDY, as Treasurer of the State of Arizona, ROY L. THORNBRUGH, as Registrar of Contractors of the State of Arizona and GARNER ELECTRIC COMPANY, *Appellants,*

vs.

LOUISE POWELL, Trustee in Bankruptcy of the Estate of Leon Showalter, bankrupt, *Appellee.*

No. 20,555

[September 19, 1966]

Appeal from the United States District Court for the District of Arizona

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Before: HAMLEY, KOELSCH, and ELY, Circuit Judges

ELY, Circuit Judge:

This appeal is from a judgment of the District Court in which an order of the Referee in Bankruptcy was upheld. The order directed the Treasurer of the State of Arizona to surrender to the bankrupt's trustee $500.00 which the Treasurer had received and held as a deposit.

The bankrupt was an Arizona contractor. An Arizona statute provides that as a condition precedent to the State's granting of a contractor's license, the applicant must file a surety bond or make a deposit with the State. Ariz. Rev. Stat. Ann. § 32-1152(A) (1965 Supp.). The bankrupt had made the deposit in cash. The

statute further provides, "Such cash deposit may be withdrawn, if there are no outstanding claims against them, one year after the termination of the license in connection with which the cash is deposited." Ariz. Rev. Stat. Ann. § 32-1152(C) (1965 Supp.).

The bankrupt's license was revoked on January 24, 1964, and on April 3, 1964, he filed a petition in bankruptcy. Two judgments against the bankrupt and the Treasurer jointly had been taken prior to the filing, one on March 26, 1964, and the other on March 30, 1964. Two other joint judgments against the bankrupt and the Treasurer were obtained after the petition was filed. No payment had been made on any of the judgments, and no levy had been made upon the deposit.

The State Treasurer is the mere custodian of the cash deposit, not the owner of the fund. *Husky v. Lee,* 2 Ariz. App. 129, 406 P.2d 847 (1965). Section 70a of the Bankruptcy Act provides, in part, that the trustee of an estate in bankruptcy shall "be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition to . . . (5) *property, . . . which* prior to the filing of the petition he could by any means have transferred or which *might have been* levied upon and sold under judicial process against him, or *otherwise seized, impounded, or sequestered: . . . .*" 11 U.S.C.A. § 110(a) (5) (Emphasis added.).

We cannot escape the conclusion that the money here in question was "property" within the meaning of the emphasized language in the quoted provision. The money itself had not been "levied upon and sold under judicial process against [the bankrupt], or otherwise seized, impounded, or sequestered: . . . ."; however, the terms of the Arizona statute make it clear to us that it "might have been". If such a deposit were not subject to being "seized, impounded, or sequestered", either by the State or by the contractor's creditors, then there would appear to be no reason for the statute which required it.

Appellant contends that our court's decision in *Brilliant v. Harvey Constr. Co.*, 212 F.2d 494 (9th Cir. 1954) requires reversal. That case also involved a cash deposit, but the cash was deposited with a county to assure performance of a construction contract. The money was held by the county for its own protection and not for the protection of third persons as was the deposit here. The decision in *Brilliant* is not applicable.

Appellants also contend that the bankrupt's interest in the deposit was contingent and, hence, not available to the trustee. While a property interest may be contingent under state law, this should not prevent its being "otherwise seized, impounded, or sequestered: . . . ." See Collier, Bankruptcy ¶ 70.37 (14th ed. 1959). The Supreme Court has recently written,

> "The main thrust of § 70a(5) is to secure for creditors everything of value the bankrupt may possess in alienable *or leviable* form when he files his petition. To this end the term 'property' has been construed most generously and *an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed.*"

Segal v. Rochelle, 382 U.S. 375, 379 (1966). (Citations omitted.) (Emphasis added.).

Affirmed

DISSENTING OPINION

KOELSCH, Circuit Judge.

I dissent. The bond in my estimation constituted security for the performance of particular obligations of the contractor and once the right of such obligees attached was beyond the reach of his general creditors. To that end the Arizona statute (Ariz. Rev. Stat. 32-1152) provides (in part) that:

> ". . . (D) The bonds required by this chapter shall be in favor of the state for the benefit of any person covered by this subsection. The bond shall be subject to claims by any person

who, after entering into a construction contract with the principal, is damaged by the failure of the principal to perform the contract or by any person furnishing labor or materials used in the direct performance of a construction contract. . . ."

By this decision we deprive several secured creditors of vested rights.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT A. KENNEDY, AS TREASURER OF THE STATE OF ARIZONA, ET AL.,
Appellants,

vs.

LOUISE POWELL, Trustee in Bankruptcy of the Estate of Leon Showalter, bankrupt,
Appellee,

No. 20,555 DC #B-10952

APPEAL from the United States District Court for the District of Arizona.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the ..... District of Arizona, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY:

ATTEST: October 25, 1966,

WILLIAM B. LUCK, Clerk,

By: WILLIAM E. WILSON, Chief Deputy.

Filed and entered September 19, 1966

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

In the Matter of LEON SHOWALTER, dba BUDD CARPENTRY AND REMODELING SERVICE,

Bankrupt

IN Bankruptcy No. B-10952 — Phx.

ORDER UPHOLDING REFEREE ON PETITION FOR REVIEW

The petitions of the Treasurer of the State of Arizona and of Charles R. Garner for Review of the Order of the Honorable Joseph U. Cracchiolo, Referee in Bankruptcy, entered on March 8, 1965, having been argued and submitted, and the Court having duly considered the same,

IT IS HEREBY ORDERED that the Order of the Referee in Bankruptcy entered in this case on March 8, 1965 is upheld on Review by this Court.

The Court finds that the Trustee in Bankruptcy has the power to take custody of the cash deposit (as provided for in A.R.S. §32-1152) since the Bankruptcy Act preempts the field.

IT IS FURTHER ORDERED that the cash deposit (as provided for in A.R.S. §32-1152) be distributed by the Trustee according to the provisions of A.R.S. §32-1152, as amended (1961). The class of creditors afforded security by the provisions of A.R.S. §32-1152 (1961) as these relate to a cash deposit, shall participate pro rata with other members of the same class. Such participation shall be in accordance with regular bankruptcy procedures, including the method by which claims are filed, and the time within which such claims are paid.

DATED at Phoenix, Arizona, this 3rd day of August, 1965.

C. A. Muecke

UNITED STATES DISTRICT JUDGE

APPENDIX E

DISTRICT OF ARIZONA
IN THE DISTRICT COURT OF THE UNITED STATES

IN THE MATTER OF LEON SHOWALTER, dba
BUDD CARPENTRY AND REMODELING SERVICE,
Bankrupt.

IN Bankruptcy No. B-10952 — Phx.

PETITION FOR REVIEW
(REQUEST FOR ORAL ARGUMENT)

TO THE HONORABLE JOSEPH U. CRACCHIOLO:

The Petition of the Treasurer of the State of Arizona respectfully shows:

I

A hearing was had by the Honorable Joseph U. Cracchiolo Referee in Bankruptcy on July 2, 1964 and August 26, 1964 for an Order to Show Cause why a certain cash bond in the amount of $500.00 deposited by the bankrupt with the Treasurer of the State of Arizona should not be turned over to the Trustee in Bankruptcy as an asset of the Bankrupt's estate.

II

That on March 8, 1965 Referee Cracchiolo entered the following order denying the petition of the Treasurer of the State of Arizona to maintain possession of the said cash bond until the statutory period had expired as stated in Arizona Revised Statutes §32-1152 as amended. The Referee's order stated in part:

> 1. That the Bankruptcy Court is vested with the requisite power to hear and determine this matter in the exercise of its summary jurisdiction and to deal with the property herein concerned under the proper exercise of such jurisdiction by

authority of §23 of the Bankruptcy Act, for the reason that as of the date of the filing of the petition in bankruptcy the cash deposit herein considered was in the constructive possession of the bankrupt by virtue of its being ". . . held by a person (Treasurer of the State of Arizona) who makes no claim to it. . . ."; *Collier Bankruptcy Manual*, §23.03, n. 12 at page 312.

2. That the title to the cash deposit herein considered passes from the Bankrupt to the Trustee in Bankruptcy upon the filing of the petition in bankruptcy pursuant to §70a (5) of the Bankruptcy Act by virtue of the fact that under the laws of the State of Arizona said deposit, at the time of the filing of the petition in bankruptcy and prior thereto was either (and in fact both) (1) transferrable by the bankrupt, or (2) subject to levy or seizure under judicial process. Viz.: *Collier Bankruptcy Manual*, §70.11, page 940.

III

That on March 18, 1965 within ten days of the entry of the order directing the Treasurer of the State of Arizona to turnover the said cash bond to the Trustee in Bankruptcy, the petitioner has filed a Petition for Review according to U.S.C.A. 11 §67 (c).

VI

That your petitioner, State Treasurer is aggrieved by the said, findings of fact, conclusions of law and order, and that said order is in error for the following reasons:

1. That a portion of the Findings of Fact is incorrect in that more than one creditor had instituted a claim against the said $500.00 cash bond. That Charles Garner dba Garner Electric Co. filed a complaint, No. 9414, in the Justice Court of the Northwest Phoenix Precinct on February 18, 1964 and Rays Lumber filed a complaint No. 5238, in the Justice Court of the Northwest Phoenix Precinct, on February 21, 1964. That said complaints named as defendant the Bankrupt and the Treasurer

of the State of Arizona, which was prior to the time the bankrupt filed a petition in bankruptcy;

2. That the conclusion of law determined by the Referee is erroneous, for the Trustee in Bankruptcy has failed to show upon what authority she is entitled to possession of the cash bond. Section 70 (a) of the Bankruptcy Act does not vest title to the said cash bond with the Trustee, for the trustee shall be vested with the title of the bankrupt to;

> "property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered. . ."

So far as the cash bond is concerned, clearly the only thing the contractor could possibly transfer, prior to bankruptcy, would be his conditional right to a refund of the bond.

The Trustee also alleges that Section 70 (c) of the Bankruptcy Act, the "strong-arm clause" vests her with the necessary authority to obtain the said cash bond. This petitioner wishes to direct the courts attention to *Betzer v. Olney* 14 Cal. App. 2nd 53, 57 P. 2d 376 (1936) and *In re Goldsby,* 51 F. Supp. 849 (S. D. Fla. 1943). While these cases appear to involve surety bonds rather than cash bonds deposited by the bankrupt, nevertheless, the reasoning and holdings of these cases appear to be dispositive of the contention that the trustee in this case succeeds only to the interest of the bankrupt contractor in this cash deposit i.e., a conditional right to recover the funds subordinate to the interests of the beneficiaries of this bond.

WHEREFORE, your petitioner prays that a certificate be promptly prepared as required by law and forwarded to the Clerk of the United States District Court accompanied by the following exhibits, copies of;

1. Memorandum in Support of Order to Show Cause and Con-

troverting a Motion to Dismiss Interposed by the Attorney General of the State of Arizona;

2. Affidavit of Allen H. Rhodes;
3. Findings of Fact, Conclusions of Law and Order;
4. Memorandum in Opposition to Petition for Turnover Order;
5. Summons and Complaint of Charles Garner dba Garner Electric Co.;
6. Summons and Complaint of Rays Lumber;

and upon the hearing thereof, said order be revised and petitioner be granted his discharge, and the cash bond be kept in the custody of the State Treasurer until the statutory period has expired.

DARRELL F. SMITH
The Attorney General

HOWARD SCHWARTZ
Assistant Attorney General

APPENDIX F

THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

In the Matter of LEON SHOWALTER, d/b/a BUDD CARPENTRY AND REMODELING SERVICE, Bankrupt.

No. B-10952-Phx.

PETITION FOR REVIEW OF ORDER IN BANKRUPTCY

I

That petitioner is a labor and materialman creditor of the above-named LEON SHOWALTER who reduced his claim to a judgment dated April 13, 1964, against the then state treasurer, Milton J. Husky, who held a cash bond for the satisfaction

of LEON SHOWALTER'S indebtedness to plaintiff. That petitioner looks for payment of his claim from said cash bond.

II

That on March 3, 1965, Your Honor entered an order herein that the Treasurer of the State of Arizona turn over to the Trustee in Bankruptcy in this Matter the sum of $500, which said order was based on findings that at all times said cash deposit is transferable by the depositor and that at all times the cash deposit is the property of the depositor and on conclusions of law that the title to said cash deposit passes from the bankrupt to the Trustee in Bankruptcy upon the filing of the petition.

III

That the aforesaid findings and conclusions are erroneous in that said cash deposit itself was not at all times transferable by the depositor, but only a contingent reversion interest therein; that said cash deposit is not the property of the depositor and was not at the time of the filing of the petition for bankruptcy in this matter, but only a contingent reversion interest therein was the bankrupt's property at that time; and that title to said deposit does not pass from the bankrupt to the trustee in bankruptcy upon the filing of the petition because there is no authority for such transfer in the Bankruptcy Act.

WHEREFORE,

petitioner prays that Your Honor certify to the Judge of this Court and transmit to the clerk the record in said proceedings having to do with, or in any manner bearing upon, the order aforesaid, as provided in Section 39 of the Bankruptcy Act.

POWERS & REHNQUIST
By FREDERICK O. ROBERTSHAW
Frederick O. Robertshaw
Attorneys for Petitioner, Charles R. Garner

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

In the Matter of LEON SHOWALTER, Bankrupt.
In Bankruptcy No. B-10952-Phx.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

At Phoenix, Arizona, in said district, on the 8th day of March, 1965.

The petition of Guy V. LoStracco, attorney for the Bankrupt in this matter, filed herein on May 28, 1964, praying for an Order to Show Cause why a certain cash bond in the amount of $500.00 deposited by the Bankrupt with the Treasurer of the State of Arizona should not be turned over to the Trustee in Bankruptcy in this Matter as an asset of the Bankrupt's estate, having come on regularly to be heard by the Court on July 2, 1964 and on August 26, 1964, upon notice duly given to the Treasurer of the State of Arizona, the Registrar of Contractors of the State of Arizona, Ray Lumber Company, United Materials, Inc., O'Malley's Building Materials (an affiliated O'Malley company) and American Credit Bureau, Inc., all of Phoenix, Arizona, as appears from proofs of service, mailing, and admissions of service or notice as shown in open Court, and the Treasurer of the State of Arizona and the Registrar of Contractors of the State of Arizona appearing by the Attorney General of the State of Arizona in the person of Howard Schwartz, attorney, and O'Malley's Building Materials and Ray Lumber Co. appearing through undesignated representatives, and the remaining creditors failing to appear, and hearings having been had at which the parties concerned were heard at length, both upon the subject matter of the Order to Show Cause and the jurisdiction of the Bank-

ruptcy Court in this Matter, and the Court having considered said petition and the evidence and argument of counsel adduced in support and contravention thereof, the Court makes the following

FINDINGS OF FACT

1. A petition in Bankruptcy in the usual form was filed by the Debtor, Leon Showalter, with the Clerk of the United States District Court for the District of Arizona at Phoenix, Arizona on April 3, 1964, No. B-10952, giving the Bankruptcy Court jurisdiction, summarily, over all of the property of the bankrupt, whether the same be in the actual or constructive possession of the bankrupt.

2. That a cash bond in the amount of $500.00 belonging to the Bankrupt was on deposit with the Treasurer of the State of Arizona pursuant to the laws of the State of Arizona and the Rules and Regulations of the Registrar of Contractors of the State of Arizona relating to the licensing of contractors as of the date of the filing of the petition in bankruptcy in this Matter; the amount of said deposit has been admitted and confirmed by the Treasurer of the State of Arizona.

3. That as of the date of the filing of the petition in bankruptcy, O'Malley Lumber Company, an affiliated O'Malley company, doing business as O'Malley's Building Materials had instituted its claim against said cash bond solely by filing civil suit No. 157577 in the Superior Court of the State of Arizona, Maricopa County, naming as Defendants the Bankrupt herein and the Treasurer of the State of Arizona.

4. That as of the date of the filing of the petition in bankruptcy herein, no creditor had either reduced his claim to judgment against the Bankrupt or perfected its claim against the cash bond aforementioned, or realized thereon by legal process or otherwise.

5. That the Treasurer of the State of Arizona and the Registrar of Contractors of the State of Arizona make no claim to such cash bond except to hold the same pursuant to the laws of the State of Arizona; that said bond is presently so held.

6. That the cash deposit (bond) is at all times subject to levy under judicial process under the laws of the State of Arizona by that class of creditors appearing in § 32-1152 of the Arizona Revised Statutes as amended; that all of the creditors named in the Order to Show Cause herein considered are within § 32-1152 as amended; that said cash deposit is at all times transferable by the depositor, subject only to the laws of the State of Arizona; that subsequent to the expiration period provided in said statute and upon the showing that no proper claims have been filed against said deposit, the deposit is subject to levy under judicial process by any creditor of the depositor; that at all times the cash deposit is the property of the depositor.

And from the above findings of fact the Court draws the following

CONCLUSIONS OF LAW

1. That the Bankruptcy Court is vested with the requisite power to hear and determine this matter in the exercise of its summary jurisdiction and to deal with the property herein concerned under the proper exercise of such jurisdiction by authority of § 23 of the Bankruptcy Act, for the reason that as of the date of the filing of the petition in bankruptcy the cash deposit herein considered was in the constructive possession of the bankrupt by virtue of its being ". . . held by a person (Treasurer of the State of Arizona) who makes no claim to it. . . ."; viz.: *Collier Bankruptcy Manual*, ¶ 23.03, n. 12 at page 312.

2. That the title to the cash deposit herein considered passes from the Bankrupt to the Trustee in Bankruptcy upon the filing

of the petition in bankruptcy pursuant to ¶ 70a(5) of the Bankruptcy Act by virtue of the fact that under the laws of the State of Arizona said deposit, at the time of the filing of the petition in bankruptcy and prior thereto was either (and in fact both) (1) transferable by the bankrupt, or (2) subject to levy or seizure under judicial process. Viz.: *Collier Bankruptcy Manual*, ¶ 70.11, page 940.

3. That if any valid liens have been created pursuant to Title 32, Chapter 10 of the Arizona Revised Statutes as amended respecting said cash deposit, the claims and liens of the parties concerned are to be determined in bankruptcy pursuant to the provisions of the Bankruptcy Act.

Therefore, it is ordered

That the Treasurer of the State of Arizona turn over to the Trustee in Bankruptcy in this Matter the sum of $500.00 and that the claims of such creditors against said fund be transferred to the funds in the hands of the Trustee.

JOSEPH U. CRACCHIOLO
Referee in Bankruptcy

APPENDIX H

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF ARIZONA

IN the matter of LEON SHOWALTER, d/b/a
BUDD CARPENTRY AND REMODELING SERVICE,
Bankrupt.

In Bankruptcy No. B-10952—Phx.

PETITION FOR ORDER TO SHOW CAUSE
RE CREDITORS CLAIMS TO CONTRACTOR'S
SECURITY DEPOSIT

To the Honorable Joseph U. Cracchiolo, Referee in Bankruptcy.

The petition of Guy V. LoStracco, attorney for the above named bankrupt, respectfully shows:

1. That the above named bankrupt has on deposit with the Treasurer of the State of Arizona a cash deposit in the amount of $500.00 pursuant to laws of the State of Arizona concerning the registration requirements for building contractors.

2. That at the time of the filing of the petition in bankruptcy no creditor had secured vested rights in the said cash deposit, or any part thereof.

3. That your petitioner is informed that the following persons, firms, or corporations now claim or may claim a vested or secured interest in the said deposit; or, that one or more of the following persons or corporations deem themselves to be restrained by law from turning over the cash deposit to the Bankruptcy Court: Milton J. Husky, Treasurer of the State of Arizona; Allen Rhodes, Registrar of Contractors of the State of Arizona; United Materials, Inc.; Ray Lumber Co.; O'Malley's Building Materials; Garner Electric Co.; A & J Glass Co.; American Credit Bureau and its Assignor; Corporations I through V; Jane and John Does I through X; Partnerships and Associations I through V;

4. That your petitioner believes that the aforesaid claimants are in fact not vested or secured or restrained as aforesaid, but that the claimants have asserted to the contrary, and therefore your petitioner requests the Court to determine the validity of claimants assertions and rights in the said cash deposit.

WHEREFORE, your petitioner prays that the Court, if it deem adviseable, fix a time and date certain for hearing of the matters set forth in this petition, and for an order to show cause why said claimants should not be compelled to cease and desist from their claims to the said deposit or from withholding such deposit from the Bankruptcy Court, and why the said deposit should not be immediately turned over to and deposited with

the said Court, or that they, and each of them, be forever barred from asserting their claims thereto.

/s/ Guy V. LoStracco
GUY V. LoSTRACCO
Attorney at Law
540 East Dunlap Ave.
Phoenix 20, Arizona

APPENDIX I

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF ARIZONA

IN THE MATTER OF LEON SHOWALTER,
d/b/a BUDD CARPENTRY and REMODELING SERVICE,
Bankrupt.

In Bankruptcy No. B-10952-Phx.

MOTION TO DISMISS AND MEMORANDUM

COME NOW, MILTON J. HUSKY, Treasurer of the State of Arizona and ALLEN RHODES, Registrar of Contractors of the State of Arizona, and move this Honorable Court to dismiss the above entitled action as refers to them for the reason that it is contrary to A.R.S. § 32-1152, as amended.

DATED this 2nd day of July, 1964.

ROBERT W. PICKRELL
The Attorney General
HOWARD SCHWARTZ
Assistant Attorney General
Attorneys for Milton J. Husky and
Allen Rhodes

MEMORANDUM OF POINTS AND AUTHORITIES

This motion to dismiss is requested because to place the

contractor's cash deposit in lieu of surety bond in the general bankruptcy fund for the trustee in bankruptcy to distribute is contrary to the intent of the Legislature as shown in A.R.S. § 32-1152, as amended. The intent of the Legislature in requiring this bond was to protect specifically those individuals or corporations which furnished labor or materials used in the direct performance of a contractor's contract.

Mr. Leon Schowalter's, d/b/a Budd Carpentry and Remodeling Service license was revoked on January 24, 1964. All laborers and suppliers who have a claim against the cash deposit bond have one year following that date in which to make a claim. If this cash deposit bond is placed in the general bankruptcy then their preferred claim would be defeated. See, Gilbert Collier on Bankruptcy, Second Edition, page 1160 (G), "Property which might have been transferred or levied upon."

Respectfully submitted,
ROBERT W. PICKRELL
The Attorney General
HOWARD SCHWARTZ
Assistant Attorney General
Attorneys for Milton J. Husky and
Allen Rhodes

APPENDIX J

IN THE JUSTICE COURT OF EAST PHOENIX PRECINCT
COUNTY OF MARICOPA, STATE OF ARIZONA

AMERICAN CREDIT BUREAU, INC., Plaintiff, v.
LEON SHOWALTER and IRENE SHOWALTER, his wife, dba BUD'S CARPENTRY AND REMODELING SERVICE, and MILTON J. HUSKY, Treasurer of the State of Arizona, as Depositor, Defendants.

No. 27173, JUDGMENT

THIS MATTER having come on for hearing this ..... day of March, 1964, and it appearing that the defendants have been duly served with Summons and Complaint as required by law, and it further appearing that the defendants have failed and refused to answer or otherwise appear in said action within the time specified by law, and it further appearing that the claim of the plaintiff is just, due and owing; then, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff be given Judgment against the defendants for and in the amount of ($129.15) ONE HUNDRED TWENTY NINE AND 15/100 DOLLARS plus the amount of $14.01 for costs herein expended plus the amount of $2.45 for interest.

DONE IN OPEN COURT this 26 day of March 1964.

IDA ANN WESTFALL, JUDGE

APPENDIX K

IN THE JUSTICE COURT OF THE
WEST PHOENIX PRECINCT, COUNTY OF MARICOPA,
STATE OF ARIZONA

RAY LUMBER CO., an Arizona corporation, Plaintiff, vs.

MILTON J. HUSKY, Arizona State Treasurer, Defendant.

No. 5238 JUDGMENT

The plaintiff's Motion for Judgment on the Pleadings coming on regularly for hearing on the 25th day of March, 1964, the plaintiff being represented by its attorney, Dean Estep, and the defendant having appeared herein through the office of the attorney general by Robert S. Murlless and the Court having examined the pleadings and being fully advised as to both the law and the facts, it is

ORDERED, ADJUDGED AND DECREED, that plaintiff have Judgment in the sum of Sixty-nine ($69.20) Dollars and Twenty Cents together with its cost incurred herein in the sum of Six ($6.20) Dollars and Twenty Cents out of the cash bond deposited with the defendant through the Registrar of Contractors by Leon Showalter, dba Budd Remodeling and Framing Service or Budd Carpentry and Remodeling and that the cash bond shall be reduced by the amount of this Judgment.

DONE IN OPEN COURT this 30 day of March, 1964.

AL J. FLOOD, Justice of the Peace

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Judgment on file in the Justice Court of West Phoenix Precinct in the case of RAY LUMBER CO., an Arizona corporation vs MILTON J. HUSKY, Arizona State Treasurer, No. 5238.

March 30, 1964.

AL J. FLOOD, Justice of the Peace of West Phoenix Precinct.

APPENDIX L

IN THE JUSTICE COURT OF
NORTHEAST PHOENIX PRECINCT,
MARICOPA COUNTY, STATE OF ARIZONA

CHARLES GARNER, d/b/a GARNER ELECTRIC CO.,

Plaintiff, vs.

LEON SHOWALTER, d/b/a BUDD CARPENTRY AND REMODELING and MILTON J. HUSKY, Treasurer of the State of Arizona, Defendants.

No. 9414 STIPULATION AND JUDGMENT
STIPULATION

Plaintiff abovenamed and defendant Milton J. Husky, Treasurer of the State of Arizona, by and through their respective authorized attorneys, do hereby stipulate that the judgment set forth below may be entered by this Court, and do hereby consent to and fully approve the terms thereof.

POWERS & REHNQUIST
By Frederick O. Robertshaw
Attorneys for Plaintiff

ROBERT W. PICKRELL
The Attorney General
Assistant Attorney General
Attorneys for Defendant
Milton J. Husky, Treasurer of
the State of Arizona

By Robert S. Murless

JUDGMENT

Good cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against defendant Milton J. Husky, Treasurer of the State of Arizona, for the sum of $128 together with plaintiff's costs incurred herein, or $11.70, including court filing fees and service of process fees.

DONE IN OPEN COURT this 13 day of April, 1964.

Charles F. Coppock
Justice of the Peace
Northeast Phoenix Precinct

APPENDIX M

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

THE O'MALLEY LUMBER COMPANY,
an Arizona corporation, Plaintiff, vs.

LEON SHOWALTER and his wife, IRENE SHOWALTER, dba BUDDS CARPENTRY AND REMODELING SERVICE, & MILTON J. HUSKEY, TREASURER OF THE STATE OF ARIZONA, Defendants.

No. 157577 JUDGMENT

THIS CAUSE coming on regularly to be heard by the above-entitled Court, sitting without a jury, at 12:03 o'clock P.M., this 22nd day of July, 1964, the Plaintiff appearing by its attorney, J. William Moore, and the defendants, Leon Showalter and his wife, Irene Showalter, dba Budds Carpentry and Remodeling Service, having failed to answer herein, the legal time for answering having expired, the default of the Defendants, Leon Showalter and his wife, Irene Showalter, dba Budds Carpentry and Remodeling Service, was thereupon entered in accordance to law; evidence was thereupon introduced for and on behalf of the Plaintiff, and the Court being fully advised in the premises, finds that the allegations in the Plaintiff's Complaint are true and that the Plaintiff is entitled to the relief prayed for therein;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment against the Defendants Leon Showalter and his wife, Irene Showalter, dba Budds Carpentry and Remodeling Service, as follows:

1. For the sum of Seven Hundred Four Dollars and Thirty Cents ($704.30), together with interest thereon at the rate of six percent (6%) per annum from the date hereof until paid;

2. For its costs in the sum of Twenty-five Dollars and Forty-five Cents ($25.45) and accruing costs.

DONE IN OPEN COURT this 22 day of July, 1964.

LAWRENCE H. DOYLE, JR., Court Commissioner

APPENDIX N

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

In the Matter of LEON SHOWALTER, Bankrupt

DEBTOR'S PETITION

To the Honorable Judge of the United States District Court for the District of Arizona, The Petition of LEON SHOWALTER, residing at 9637 N. 10th Ave., No. 2, County of Maricopa, State of Arizona, by occupation a carpenter, Howard Davis Construction of Phoenix, respectfully represents:

1. Your petitioner has resided at Phoenix, Arizona, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petititoner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore, your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

GUY V. LoSTRACCO, Attorney
540 East Dunlap,
Phoenix 20, Arizona

LEON SHOWALTER,
Petitioner

STATE OF ARIZONA
COUNTY OF MARICOPA, ss.

I, LEON SHOWALTER the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

LEON SHOWALTER, Petitioner

Subscribed and sworn to before me this 30 day of March, 1964.

GUY V. LoSTRACCO, Notary Public

My Commission expires: 7/28/67

Name of Bankrupt/Debtor Leon Showalter. Dist. No. 971, Docket No. 10952, Date Petition Filed 4/3/64. Name of Referee, Joseph U. Cracchiolo.

APPENDIX O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

In Bankruptcy

No. 198258-PH

In the Matter of

J. W. MITCHELL (ngn),
fdba MITCHELL CONSTRUCTION

Bankrupt.

ORDER RE APPLICATION FOR TURNOVER ORDER VS. CONTRACTORS' STATE LICENSE BOARD

The above-entitled matter having come on for hearing on January 27, 1966, before the undersigned Referee in Bankruptcy, the State of California having been duly notified of the hearing by mail and appearing through its counsel, Thomas C. Lynch, Attorney General by Henry G. Ullerich, Deputy Attorney General, and the Trustee, C. Douglas Wikle, appearing in his own behalf, and evidence having been presented an the Trustee having waived findings of fact and conclusions of law,

It is Ordered that the Application For Turnover Order be and the same hereby is dismissed.

DATED: February 16, 1966

JOHN E. BERGENER, Referee in Bankruptcy

APPENDIX P

§ 7071.6 *Action on claim against bond or deposit; preferred claim; partial payment; disciplinary action; new bond*

Any person claiming against any bond or cash deposit required by this article may maintain an action at law against the licensee and the surety or the cash depository * * *, *but such action must be brought within two years after the expiration of the license period or periods for which a bond or cash deposit has been provided.*

The claim of any employee of the contractor for wages shall be a preferred claim against any bond or cash deposit.

If any bond or cash deposit which may be required is insufficient to pay all claims in full, the sum of the bond or cash deposit shall be distributed among all claimants in proportion to the amount of their respective claims with priority given to claims for wages. The partial payment of any claims shall not be considered satisfaction of said claims and the claimants may institute appropriate legal actions for payment of any unpaid balance in any other manner provided by law, and the registrar may continue suspension or revocation of any license involved until such time as said claims and any other claims arising out of an action against such bond or cash deposit are satisfied in full.

The aggregate liability of the surety for all claims of said persons shall, in no event, exceed the penal sum of said bond.

Upon failure of a licensee to maintain in full force and effect any bond or cash deposit required by this article the registrar shall issue an order suspending or revoking such license, which shall not be reinstated until a new bond or cash deposit has been filed.

Any judgment or admitted claim against any bond or cash de-

posit required by this article shall constitute grounds for disciplinary action against such licensee. The board shall require the licensee to file a new bond in an amount not less than three thousand dollars ($3,000) nor more than ten thousand dollars ($10,000) or to increase his cash deposit to such an amount. (As amended Stats.1965, c. 1022, p. 2654, § 2.)

§ 7071.9 *Bond or deposit as condition to issuance, renewal, reinstatement, etc.*

Except as provided in Sectiton 7071.5, the board shall require, on or after January 1, 1964, as a condition precedent to the issuance, reinstatement, reactivation, or reissuance of a license, and on or after July 1, 1965, as a condition precedent to the renewal of a license, that the applicant file or have on file with the registrar a bond issued by an admitted surety in the sum of one thousand dollars ($1,000) in favor of the State of California, or in lieu thereof, that such applicant post with the registrar a cash deposit in the sum of one thousand dollars ($1,000). *Such bond or cash deposit required by this section shall be for the benefit of (a) any person damaged as a result of a violation of this chapter by the licensee, (b) any person damaged by fraud of the licensee in the execution or performance of a contract, and (c) any employee of the licensee damaged by the licensee's failure to pay wages or fringe benefits.* (As amended Stats.1965, c. 1025, p. 2660, § 2.)